

ADVISORY OPINION 95-011

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

June 21, 1995

Democratic National Committee
Mr. Joseph Sandler
430 South Capitol Street, SE
Washington, D.C. 20003

Dear Mr. Sandler:

This is in response to your May 22, 1995, letter in which you request an advisory opinion regarding whether the Democratic National Committee ("DNC") may contribute to Kentucky "non-federal" candidates and committees and to "non-federal" accounts of the Kentucky Democratic Party ("KDP").

You state that the DNC has "federal" and "non-federal" accounts. DNC deposits contributions into "federal" accounts which meet the limitations and prohibitions of federal law. The DNC may deposit into its "non-federal" accounts contributions from sources prohibited under federal law and contributions exceeding the limitations of federal law. DNC may use its federal account to pay a specified percentage of administrative and fundraising expenses and generic campaign activity. FEC rules permit DNC to use funds in its "non-federal" accounts 1) to support candidates in state and local elections in accordance with state law, 2) to make transfers to state party committee, and 3) to pay administrative expenses.

You further advise that both the DNC's "federal" and "non-federal" accounts are non-profit and are incorporated for liability purposes pursuant to 11 C.F.R. § 114.12(a). The KDP also has "federal" and "non-federal" accounts.

Your questions may be summarized as follows:

1. Does DNC's status as a not-for-profit corporation disqualify it from making contributions from its "non-federal" accounts to Kentucky non-federal candidates and committees? Yes. As referenced in your letter, the Registry previously opined on June 19, 1991, that a corporation may not make a political contribution. (See attached minutes of June 19, 1991, meeting, p. 32.) This opinion is based on Kentucky statutes KRS 121.025 and KRS 121.035. In addition to these statutory prohibitions, Section 150 of the Kentucky Constitution also provides that no corporation may "directly or indirectly offer, promise or give, or shall authorize, directly or indirectly, any person to offer, promise or give any money or any thing of value to influence the results of any election in this state. ..." Neither the Kentucky Constitution, KRS 121.025, nor KRS 121.035 distinguish between corporations organized for profit and those which are not-for-profit.
2. May the DNC contribute funds from its "non-federal" out-of-state account to Kentucky non-federal candidates and committees? The answer to your second question is no. Again, if the "non-federal" account is incorporated, it may not contribute to the KDP.

3. Could the DNC contribute from its "non-federal" account if it insures that no single contributor's donation exceeds \$1,500 per calendar year? As the non-federal account is incorporated, it may not contribute to the KDP.
4. May the DNC contribute funds from its "federal" account to the "non-federal" account of the KDP? As the federal account is incorporated, it may not contribute to the non-federal account of the KDP.
5. Assuming that the DNC is permitted to make "non-federal" contributions in Kentucky, is the DNC affiliated with the KDP pursuant to KRS 121.150(7)? As the response to your fourth question is "no," the application of affiliation rules is unnecessary. KRS 121.150(7) applies to permanent committees and contributing organizations. The DNC is neither a permanent committee nor a contributing organization as defined by KRS 121.015.
6. Are the reporting provisions of KRS 121.170(6) regarding federally-registered out-of-state committees applicable to such contributions? As the DNC is a political party committee rather than a registered permanent committee ("PAC") as defined by KRS 121.015(c), KRS 121.170(7) is not applicable.

However, assuming that DNC were a PAC within the meaning of KRS 121.015(c), the prohibitions against corporate contributions contained in Section 150 of the Kentucky Constitution would appear to conflict with KRS 121.170(7). The public policy declared in the Constitution may not be changed by the legislature or the courts, but only by formal amendment. See City of Louisville v. Presbyterian Orphans Home Soc. Of Louisville, Ky. Ct. App., 186 S.W.2d 194, 200 (1945).

Sincerely,

Rosemary F. Center General Counsel

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